# CONDITIONS OF PURCHASE

### Powercor Australia Ltd ABN 89 064 651 109

#### The Contract

If the Supplier commences providing the Goods and or Services, the Supplier will be deemed to have accepted the Purchase Order and these Conditions including any documents, plans and specifications attached or incorporated by reference into this Contract.

#### Goods and Services to be Provided

* 1. The Supplier agrees to provide Powercor Australia with the Goods and or Services described in the Purchase Order by the date specified in the Purchase Order. Time is of the essence of this Contract.
	2. The Supplier must comply with any reasonable instructions given by Powercor Australia relating to any aspects of the Goods and or Services or this Contract.
	3. The Supplier must provide the Goods and or Services using all due skill, care and diligence and in accordance with sound professional and business practices and meet the standards set by Powercor Australia to Powercor Australia' s reasonable satisfaction. If any Goods and or Services provided by the Supplier are of a standard below that required by Powercor Australia, the Supplier must, at its own expense, immediately rectify the Goods and or Services.
	4. Title to Goods provided by the Supplier will pass to Powercor Australia upon delivery. Risk in the Goods will remain with the Supplier until the Goods have been accepted by Powercor Australia.
	5. If the Goods perform and are in accordance with this Contract (including any specifications), Powercor Australia will be deemed to have accepted the Goods not earlier than 28 days after:
		1. the date of delivery of the Goods; or
		2. the completion of any test(s) specified in the Contract, whichever is the later (provided Powercor Australia has not notified the Supplier of non-acceptance). Signed delivery dockets do not constitute acceptance by Powercor Australia of Goods delivered. Services will be accepted as completed when Powercor Australia confirms in writing that the Services have been completed to its reasonable satisfaction.
	6. If the Goods do not perform or are not in accordance with this Contract (including any specifications), Powercor Australia may in its absolute discretion:
		1. reject the Goods and require the Supplier, at its own expense, to replace the Goods; or
		2. reject the Goods and terminate this Contract.
	7. The Supplier warrants that:
		1. all Goods provided by the Supplier will be new, of merchantable quality, free from any encumbrances and defects (including latent defects), fit for the intended purpose set out in, or as may be reasonably inferred from this Contract, and conform to any specifications set by Powercor Australia;



* + 1. the Services will be provided with due skill and care to the standard reasonably expected of a person performing the business of the Supplier.

#### Defects

The Supplier must, at its expense and without delay, promptly rectify all defects in the Goods and or Services which are notified to the Supplier within the greater of 18 months of the date of receipt of delivery by Powercor Australia or the period of warranty provided by the Supplier in relation to the Goods and or Services. Such rectification is without prejudice to any of Powercor Australia' s other rights and remedies.

#### Nature of the Relationship

The Supplier is engaged under this Contract as an independent contractor. Nothing in this Contract is intended by the parties to constitute the Supplier an employee or agent of Powercor Australia. Nothing in this Contract will be construed as creating a partnership or joint venture between the Supplier and Powercor Australia.

#### Price and Payment

* 1. Terms defined in the GST Act have the same meaning given to those terms when used in this Contract.
	2. Prices specified in the Purchase Order are inclusive of all taxes (except GST), duties and other Government imposts and charges imposed or levied in Australia or overseas. Unless otherwise specified in the Purchase Order, all prices are in Australian dollars and are fixed and are not subject to variation except as permitted under this Contract.
	3. If GST is payable in relation to a taxable supply made by the Supplier under the Purchase Order, the amount payable for that taxable supply will be the amount payable under the Purchase Order plus GST. The Supplier' s right to payment is subject to a valid tax invoice in the form required by the GST Act being emailed to: invoices@powercor.com.au

All invoice queries must be emailed to: accountspayable@powercor.com.au

Tax invoices may be submitted at any time after the provision of the Goods and or Services.

* 1. Unless another timeframe is specified in the Purchase Order, Powercor Australia will pay the Supplier within 42 days of receiving a properly rendered tax invoice from the Supplier for the value of the Goods and or Services provided. A properly rendered invoice will contain the following information: Purchase Order number; vendor number; description and price of Goods and or Services provided; total amount of GST applicable to the tax invoice; total tax invoice amount; date and the delivery address of the Goods and or Services. Any amount paid by Powercor Australia is on account only and does not imply the Goods and or Services or any part of them has been approved or accepted by Powercor Australia.



* 1. Powercor Australia may set off any amount due and payable by Powercor Australia to the Supplier against any amount owing by the Supplier, whether under this Contract or otherwise.

#### Liabilities and Indemnities

* 1. The Supplier is liable for and must indemnify Powercor Australia and must keep Powercor Australia indemnified against all loss (including liabilities of Powercor Australia to third parties), costs (including legal costs on a full indemnity basis), damage, expense and injury arising as a direct or indirect result of the Supplier' s negligent act or omission or breach of this Contract.
	2. The Supplier' s liability under this Contract is reduced proportionately to the extent that Powercor Australia' s negligent acts or omissions under this Contract or breach of this Contract has contributed toward such loss, costs, damage, expense or injury.

#### Insurance

* 1. The Supplier must effect and maintain:
		1. public and products liability insurance for an amount of not less than $20 million per occurrence;
		2. professional indemnity insurance for an amount of not less than $1 million or the value of the Purchase Order, whichever is the greater;
		3. such insurances as are legally required under any workers' compensation legislation applicable in the location where the Goods and or Services are to be provided; and
		4. any other insurances required to be held by the Supplier under law.
	2. The insurance policies in clauses 7.1(a), (c) and (d) must be maintained until such time as the Supplier has satisfied its obligations under clause 3. The insurance policy in clause 7.1(b) must be maintained for a period of six years after the Supplier has satisfied its obligations under clause 3. If requested by Powercor Australia, the Supplier must provide Powercor Australia with satisfactory evidence that the insurances have been effected and maintained.

#### AER Ring Fencing Requirements

* 1. The Supplier must
		1. in performing its obligations under this Contract, comply with the AER Ring Fencing Guideline clauses:
			1. 4.1 (Obligation not to discriminate);
			2. 4.2.1 (Physical separation/co-location);
			3. 4.2.2 (Staff sharing); and
			4. 4.3.2 (Protection of confidential information),

as if the Supplier was the Relevant Company under the AER Ring Fencing Guideline;

* + 1. only use any brand containing the Relevant Company brand or such other brand as may be authorised by Powercor Australia from time to time whilst it is providing the Services;
		2. not engage in conduct which, if the Relevant Company engaged in such conduct, would be contrary to its obligations under clause 4 of the AER Ring Fencing Guideline;
		3. otherwise comply with any reasonable direction from Powercor Australia in relation to the AER Ring Fencing Guideline.
	1. The Supplier must
		1. immediately notify Powercor Australia in writing if:
			1. it receives any complaints in relation to an AER Ring-fencing Guideline matter whilst it is providing the Services;
			2. the Supplier is in breach of any of the requirements contained in clause 8.1;
		2. within 7 days of receiving a request from Powercor Australia:
			1. provide Powercor Australia with a corrective action plan to address any Supplier breaches of Clause 8.1;
			2. provide any information Powercor Australia reasonably requests in relation to information requests or directives Powercor Australia receives from any Relevant Company or the AER.
	2. On receiving reasonable notice from Powercor Australia, the Supplier must provide Powercor Australia and any external auditor engaged by Powercor Australia with reasonable access to the Supplier' s:
		1. premises from which the Services (or any part of them) are provided; and
		2. personnel, systems, facilities, information and records that relate to the Supplier' s performance of the Services under this Contract.

#### Privacy and Data Breach Notification

* 1. The parties must comply with their obligations under any applicable Privacy Laws.
	2. The Supplier must ensure that all:
		1. Customer Data;
		2. Personal Information; and
		3. data as to the quantum of electricity delivered (both historical and current load demand) from or to any one or more sites (or their connection points),

relating to or obtained in connection with a Relevant Company' s operations (which is acquired or accessible by the Supplier in connection with the performance of its obligations or the exercise of its rights under this Contract) remains stored only within Australia, is accessible and maintained only from within Australia and may not be taken outside of Australia except in circumstances where:

* + 1. it is required to be accessed in order to comply with any law of the Commonwealth of Australia, or any of its States and Territories; and
		2. it is aggregated (with removal of any information that would enable identification of Personal Information).



* 1. Where Customer Data is stored in the cloud, the Supplier must ensure that it uses a cloud provider that is listed on the ASD Certified Cloud Services List and Gateway Services that are certified by ASD.
	2. Notwithstanding any other term of this Contract:
		1. if the Supplier becomes aware of a Data Incident, the Supplier must:
			1. immediately notify Powercor Australia of the Data Incident by telephone and email or by using such other contact details as Powercor Australia may notify to the Supplier from time to time;
			2. not disclose to any third party the existence or circumstances surrounding the Data Incident, or otherwise deal with a third party in relation to the Data Incident, without the prior written approval of Powercor Australia;
			3. retain system logs and other information that may be relevant to the Data Incident, or to assessing the cause or impact of the Data Incident;
			4. provide all information and access to the Supplier' s premises, staff, processes and systems reasonably requested by Powercor Australia for the purpose of investigating the Data Incident and otherwise cooperate with any investigation by Powercor Australia;
			5. immediately take all action reasonably necessary to:
				1. mitigate the impact of the Data Incident (including to restore or recover any lost data); and
				2. prevent any repeat of the Data Incident in the future, including by complying with any relevant directions from Powercor Australia, and keeping Powercor Australia informed at all times of any actions that the Supplier takes or proposes to take under this clause;
		2. the Supplier acknowledges that a failure by the Supplier to comply with this clause is a material breach of this Contract.

#### Labour Hire Licensing

If in providing the Services the Supplier is considered to be a provider of labour hire services under Labour Hire Licensing Law, the Supplier must:

1. ensure it holds a valid licence under the Labour Hire Licensing Law whenever it is engaged in providing the Services;
2. not do, or fail to do anything that would cause Powercor Australia to contravene the Labour Hire Licensing Law;
3. if requested by Powercor Australia, provide evidence that it holds a valid licence under the Labour Hire Licensing Law;
4. ensure each subcontractor engaged by the Supplier to provide the Services holds a valid licence under the Labour Hire Licensing Law if that subcontractor is considered to be a provider of labour hire services under Labour Hire Licensing Law;
5. indemnify Powercor Australia against any loss and damage arising out of the Supplier' s failure to comply with the requirements of this clause 10.

#### Anti-Slavery and Human Trafficking Laws

* 1. In performing its obligations under this Contract, the Supplier must:
		1. comply with all applicable anti-slavery and human trafficking laws and have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance;
		2. not engage in any activity, practice or conduct that would constitute an offence under Australian anti-slavery and human trafficking laws if such activity, practice or conduct were carried out in Australia; and
		3. include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least equivalent to those set out in this clause 11.1.
	2. The Supplier warrants that to the best of its knowledge, having made reasonable enquiries, neither the Supplier nor any of its officers, employees or other persons associated with it:
		1. has been convicted of any offence involving slavery and human trafficking; or
		2. has been beeen or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
	3. The Supplier shall notify Powercor Australia as soon as it becomes aware of:
		1. any breach, or potential breach, of this clause 11; or
		2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

#### Intellectual Property and Confidentiality

* 1. The Supplier warrants that the provision of the Goods and or Services and Powercor Australia' s use of them will not infringe any third party intellectual property rights.
	2. The Supplier agrees that:
		1. nothing in this Contract will be construed as granting the Supplier any of Powercor Australia' s intellectual property rights; and
		2. intellectual property rights arising as a result of the provision of the Goods and or Services will vest in and transfer to Powercor Australia on creation.
	3. Any information provided by or on behalf of Powercor Australia to the Supplier which is noted as confidential or is by its nature confidential must not be disclosed by the Supplier to any third party without the prior written consent of Powercor Australia.

#### Termination

* 1. If the Supplier breaches this Contract and fails to remedy the breach within 7 days of receiving notice from Powercor Australia to do so, or if a liquidator, administrator, receiver and manager, controller or other like officer is appointed over all or some of the assets of the Supplier or there is a change in ownership of the Supplier, Powercor Australia may terminate this Contract immediately by giving written notice to the Supplier.
	2. Any termination or expiration of this Contract does not affect any rights and liabilities Powercor Australia may otherwise have under law. The obligations of the Supplier under clauses 2, 3, 5, 6, 7, 8, 9 and 12 survive the termination or expiration of this Contract.

#### General

* 1. The Supplier must, at its cost, comply with all relevant legislation, ordinances, regulations, codes, awards, by-laws, orders and proclamations, and with the lawful requirements and rules of relevant government authorities.
	2. This Contract is governed by the law in force in Victoria. The parties submit to the non-exclusive jurisdiction of the courtsof Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Contract.
	3. If the whole or any part of these Conditions is or becomes or is held to be illegal, invalid or unenforceable, then the whole and each part of the clauses of these Conditions will (to the extent necessary to avoid such illegality, invalidity or unenforceability) be interpreted, read down or severed without affecting the operation of the remaining clauses.
	4. The Supplier must not, without the prior written consent of Powercor Australia, assign, transfer or subcontract the performance of any or all of the Supplier' s obligations or benefits under this Contract to a third party.
	5. This Contract may only be amended in writing signed by both parties.
	6. If there is any conflict or ambiguity between the documents forming part of this Contract, the following order of precedence will apply to the extent necessary to resolve the conflict or ambiguity:
		1. any special conditions attached to this Contract;
		2. these Conditions;
		3. the terms of the Purchase Order;
		4. any other documents, plans and specifications attached or incorporated by reference.

#### Definitions

The terms below have the following meanings when referred to in these Conditions:

1. **AER** means the Australian Energy Regulator which operates under the *Competition and Consumer Act 2010* (Cth);
2. **AER Ring-fencing Guideline** means the "Ring-fencing Guideline Electricity Distribution Version 2 October 2017" made by the AER under clause 6.17.2 of the National Electricity Rules, as amended from time to time;
3. **ASD** means the Australian Signals Directorate;
4. **Certified Cloud Services List** means the list of "ASD Certified Cloud Services" or its equivalent as published periodically by the Australian Government Department of Defence, ASD;
5. **Conditions** mean these conditions of purchase;
6. **Contract** means the Purchase Order, these Conditions and any documents, plans and specifications attached or incorporated by reference;
7. **Customer Data** means information relating to a Relevant Company' s customers or end users (including metered data and Personal Information);
8. **Data** means all data of any kind (including Personal Information) that the Supplier is required to generate, collect, process, store or transmit under this Contract;
9. **Data Incident** means any actual or suspected:
	1. breach of the Supplier' s obligations relating to protection of Data under this Contract;
	2. unauthorised access to, or unauthorised disclosure of, any Data; or
	3. loss of Data, including where Data is damaged or corrupted so that it becomes unusable;
10. **Gateway Services** means services that are certified by the Australian Government Department of Defence, ASD;
11. **Goods** mean the equipment, goods or other materials the Supplier is required to supply pursuant to the Purchase Order;
12. **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
13. **Labour Hire Licensing Law** means laws that relate to providers of labour hire services in the jurisdiction where the Services are being performed;
14. **Personal Information** means personal information (within the meaning given in the Privacy Act) which is acquired or accessible from any source by the Supplier or any subcontractor in connection with the performance of its obligations or the exercise of its rights under this Contract;
15. **Powercor Australia** means Powercor Australia Ltd ABN 89 064 651 109;
16. **Privacy Act** means the *Privacy Act 1988* (Cth);
17. **Privacy Laws** means the Privacy Act, including the National Privacy Principles and all other applicable privacy legislation;
18. **Purchase Order** means the document titled "Purchase Order" to which these Conditions are attached or referred to and "Order" has a corresponding meaning;
19. **Relevant Company** means:
	1. United Energy Distribution Pty Ltd (ABN 70 064 651 029);
	2. Powercor Australia Ltd (ABN 89 064 651 109);
	3. SA Power Networks (ABN 13 332 330 749);
	4. CitiPower Pty Ltd (ABN 76 064 651 056);
20. **Services** means the services the Supplier is required to supply pursuant to the Purchase Order; and
21. **Supplier** means the company, firm, person or persons named in the Purchase Order.